

### **III. Remarks**

#### **A. Status of the Application**

Claims 1-8 and 10-37 are pending of which claims 1, 14, 27, 28, 30, and 34 are independent. By this paper, claims 1, 10, 13, 14, 27, 28, 30, and 34 are amended. Claim 9, by this paper, has been canceled without prejudice to or disclaimer of the subject matter therein. Reconsideration of the pending claims is respectfully requested in light of the above amendments and the following remarks.

#### **B. Claim Rejections**

##### *1. Independent Claims 1 and 30*

The Office Action rejected independent claims 1 and 30 under 35 U.S.C. §102 as being anticipated by U.S. Patent Publication No. 2004/0204715 to Evans et al. ("Evans"). Features of previously pending claim 9 have been incorporated into amended independent claims 1 and 30. In that regard, the Office Action rejected previously pending claim 9 under 35 U.S.C. §103(a) as being unpatentable over Evans in view of U.S. Patent No. 6,645,213 to Sand et al. ("Sand"). Accordingly, the Applicants will also address the rejection of amended claims 1 and 30 in view of the 35 U.S.C 103 rejection using the combination of the Evans and Sand references.

With respect to amended independent claims 1 and 30, neither Evans nor Sand appear to disclose a surgical system for delivery of viscous fluid comprising "a plunger head selectively attachable to and rotatable with respect to a distal end of the plunger member" as recited in amended claims 1 and 30. Accordingly, Applicants respectfully request that the Examiner reconsider and pass claims 1 and 30 to allowance.

##### *2. Independent Claim 28*

The Office Action rejected independent claim 28 under 35 U.S.C. §103(a) as being unpatentable over Evans in view of U.S. Patent No. 5,307,841 to Condon ("Condon"). Applicants traverse the rejection of independent claim 28 on the grounds that the combination of the cited references are defective in establishing a *prima facie* case of obviousness.

With respect to amended independent claim 28, even when combined, Evans and Condon

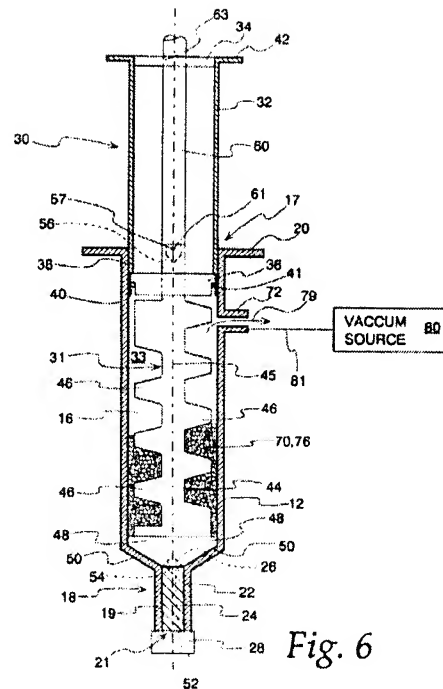
do not disclose or suggest a surgical system for delivery of viscous fluid comprising “a plunger head selectively attachable to and rotatable with respect to an end of the plunger member.” As stated above with respect to claim 1, Applicants agree with Examiner that Evans “does not disclose a plunger head attached to the plunger member.” Office Action, p.4. Additionally, the Office Action does not identify any portion of Condon curing this deficiency. Accordingly, even when combined, Evans and Condon do not recite all of the features of claim 28. Therefore, the Applicants respectfully request that the Examiner reconsider and withdraw the rejection and pass claim 28 to allowance.

### *3. Independent Claims 14 and 34*

The Office Action rejected amended independent claims 14 and 34 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,842,786 to Solomon (“Solomon”) in view of Sand. Applicants traverse the rejection of independent claims 14 and 34 on the grounds that the combination of the cited references are defective in establishing a *prima facie* case of obviousness.

With respect to amended independent claim 14, Solomon at least fails to disclose a surgical system for delivery of viscous fluid comprising, “a mixer assembly including a mixer shaft and a mixer head, the mixer shaft extending through the plunger member, the mixer assembly being rotatable to mix the viscous fluid, wherein the plunger member is sized and shaped to be *translated through the reservoir member while moving along the mixer shaft* to eject the viscous fluid through the orifice of the reservoir member.”

Referring to FIG. 6 shown below, the Office Action identified reciprocating member 30, mixing member 31, and mixing chamber 16 as corresponding to the claimed plunger member, mixer assembly, and reservoir member, respectively.



In that regard, Solomon teaches that “[o]nce mixing is complete, the mixing member 31 is removed from the mixing chamber 16 . . . by simply pulling the mixing member 31 . . . axially along axis 45 until the radial extensions 48 contact the rotating disc 36.” Solomon, col.5 l.64 – col.6 l.8. Solomon further states that “the radial extensions 48 completely cover the radial opening 68 in the disc 36 and thus provide a complete seal preventing any excess mixed cement from escaping into the reciprocating member 30.” Solomon, col.6 ll.9-12. Furthermore, Solomon teaches that following the withdraw of the mixing member 31 then may the reciprocating member 30 be axial displaced into mixing chamber 16 to dispense bone cement 70,76. *See* Solomon, col.6 ll.35-47. Therefore, Solomon teaches that mixing member 31 is removed from the mixing chamber 16 and that radial extensions 48 cover the radial openings 68 during the dispensing of cement 70,76. Thus, reciprocating member 30 does not translate through the mixing chamber 16 while moving along a shaft of the mixer assembly 31 when cement 70,76 is dispensed. Sand does not cure this deficiency.

Accordingly, even when combined, Solomon and Sand do not disclose or suggest all of the elements of claim 14. Therefore, the Applicants respectfully request that the Examiner reconsider and withdraw the rejection and pass claim 14 to allowance.

Independent claim 34 has been amended to recite some features similar to claim 14. In

particular, claim 34 recites a surgical method for delivering implant material to an implant site comprising, “actuating the plunger-member by moving the plunger-member along the mixer shaft, within the reservoir member, to eject viscous fluid from the reservoir member.”

Accordingly, claim 34 is allowable for at least the same reasons as discussed above for claim 14.

Therefore, the Applicants respectfully request that the Examiner reconsider and withdraw the rejection and pass claim 34 to allowance.

#### *4. Independent Claim 27*

The Office Action rejected independent claim 27 under 35 U.S.C. §102 as being anticipated by Solomon. Applicants respectfully traverse this rejection.

With respect to amended independent claim 27, Solomon at least fails to disclose a surgical system for delivery of viscous fluid “wherein the means for ejecting translates through the means for storing by translating along the means for mixing during the ejecting of viscous fluid from the means for storing.” As discussed above with respect to claim 14, Solomon teaches that mixing member 31 is removed from the mixing chamber 16 and that radial extensions 48 cover the radial openings 68 during the dispensing of cement 70,76. Thus, reciprocating member 30 does not translate along and rotate relative to the mixer assembly 31 when cement 70,76 is dispensed. Accordingly, Solomon does not disclose all of the recited features of claim 27. Therefore, the Applicants respectfully request that the Examiner reconsider and withdraw the rejection and pass claim 27 to allowance.

#### **C. Dependent Claims**

Claims 2-8 and 10-13 depend from independent claim 1. Claims 15-26 depend from independent claim 14. Claim 29 and claims 31-33 depend from independent claims 28 and 30, respectively. Claims 35-37 depend from independent claim 34. These claims are believed to be distinct from the art of record, for example for the same reasons discussed above with respect to their respective independent claims. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of these claims.

#### IV. Conclusion

In view of the foregoing remarks, all of the claims currently pending in this application are in a condition for allowance. The Examiner is invited to contact the undersigned at 972-739-8640 to discuss any remaining issues in an effort to expedite the allowance of this application.

The Office Action contains characterizations of the claims and the related art of which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

Respectfully submitted,



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